



Report 03.359
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Committee Council
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Changes to voting procedures

1. Purpose

To advise the Council of changes to voting procedures and to seek appropriate amendments to the Council's Standing Orders.

2. Background

The Local Government Act 2002 (the Act) introduces some changes to provisions relating to voting at local authority meetings. There has been some uncertainty about the interpretation of the new provisions. The Department of Internal Affairs sought advice from the Crown Law Office and has now passed on this advice to local authorities.

The provisions in question are contained in clause 24 of Schedule 7 of the Act. These provisions state:

- (1) *Unless otherwise provided in this Act or in any standing orders,—*
 - (a) *the acts of a local authority must be done, and the questions before the local authority must be decided, at a meeting by—*
 - (i) *vote; and*
 - (ii) *the majority of members that are present; and*
 - (b) *the mayor or chairperson or other person presiding at the meeting—*
 - (i) *has a deliberative vote; and*
 - (ii) *in the case of equality of votes, does not have a casting vote.*
- (2) *To avoid doubt, in the case of equality of vote, the question is defeated and the status quo is preserved.*

- (3) *An act or question coming before a local authority must be done or decided by open voting.*

The questions that arose from these provisions were:

- (1) Whether clause 24(1)(a) requires a majority of members *present* at a meeting of a local authority (rather than a majority of those voting) to vote for a resolution in order for it to be carried, and if so, whether standing orders can override this requirement?
- (2) Whether it is possible for a local authority to adopt standing orders that provide for the presiding member to have a casting vote, thus overriding the provisions in clause 24(1)(b).

The advice from the Crown Law Office is:

- (1) The wording of clause 24(1)(a) requires that decisions be made by the majority of members that are present (compared with “present and *voting*” under section 114J of the 1974 Act). While it is possible for standing orders to provide differently for special cases (e.g. where a specific conflict of interest has been identified), it is not considered that standing orders could be used in a way that run directly counter to the express provisions of the Act in all cases.
- (2) It is the clear intention of clause 24, and particularly subclause (2) of that clause, that in the case of an equality of votes the motion is defeated and that the Mayor or Chairperson does not have a casting vote. In light of clause 24(2), it is not possible for standing orders to provide differently.

3. Implications

The implications from the Crown Law advice are clear:

- a majority vote requires a majority of those members present, other than where there is an identified conflict of interest
- the Chairperson does not have a casting vote.

While the Crown Law advice is only a legal view, the prudent approach is to avoid any possible challenge to the Council’s decisions by adopting the advice. This approach creates a conflict with the Council’s Standing Orders.

4. Standing Orders

Clause 27 of Schedule 7 of the Act states:

- (1) *A local authority must adopt a set of standing orders for the conduct of its meetings and those of its committees.*
- (2) *The standing orders of a local authority must not contravene this Act, the Local Government Official Information and Meetings Act 1987, or any other Act.*

- (3) *After the adoption of the first standing orders of the local authority, an amendment of the standing orders or the adoption of a new set of standing orders requires, in every case, a vote of not less than 75% of the members present.*

The Department of Internal Affairs has indicated that Standards NZ has reconvened the committee that undertook the review of Model Standing Orders in 2001 (NZS 9202:2001). It is the intention of that committee to revise the model to ensure that it is consistent with all provisions of the new Act. It is recommended that we wait for this review to be completed before commencing a full review of the Council's Standing Orders.

However, the changes that are necessary to provide compliance with the Act in relation to voting are simple and should be made now to avoid any uncertainty in the conduct of meetings. The changes will require a favourable vote by 75 percent of the members present. The Standing Orders that require change are SO 3, SO 91(e), SO 127 and SO129. The changes proposed are set out below.

- 3 *The Council may suspend Standing Orders temporarily during a meeting by a vote of three-quarters of the members present, and the reason for the suspension shall be stated in the resolution of suspension.*

91(e) *If during the course of a Council meeting fresh facts or information are received concerning a matters already resolved at the meeting, the previous resolution may be revoked or altered by the consent of three-quarters of the members then present .*

127 *All acts of the Council or of any Committee of Council thereof, and all questions before the Council or Committee shall be done and decided by a meeting of the Council or Committee by the majority of such members as are present , except as otherwise provided for by Standing Orders (SO 3, SO 3(h) and SO 91).*

129 *The Chairperson or other person presiding at any meeting of the Council or of any Committee shall have a deliberative vote .*

The reference to SO 3(h) in SO 127 should actually refer to SO 13(h), and refers to resolutions removing the Chairperson or Deputy Chairperson from office which must be carried by a majority of the total membership of Council.

5. Communications

There is no need to undertake any communication as a result of this report.

6. Recommendations

That the Council:

1. *receives the report and notes that:*

- *a majority vote requires a majority of those members present, other than where there is an identified conflict of interest*

- *the Chairperson does not have a casting vote.*
- 2. ***amends*** *Standing Order 3 to remove the words “and voting”.*
- 3. ***amends*** *Standing Order 91(e) to remove the words “and voting”.*
- 4. ***amends*** *Standing Order 127 to remove the words “and vote thereon”.*
- 5. ***amends*** *Standing Order 129 to remove the words “and, in case of equality of votes, shall have a casting vote also.”*

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